

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. 99-30244-DRH

JUAN RIOS,

Defendant.

ORDER

HERNDON, Chief Judge:

On January 4, 2013, the Court sentenced Rios to a term of 37 months in prison, 3 years supervised release, a \$500.00 special assessment, \$7,500.00 fine and \$308,783.67 in restitution (Docs. 103 & 105). Pending before the Court is Rios' "emergency motion to correct clerical error pursuant to Rule 36" (Doc. 115). Rios moves the Court to correct the sentence to reflect actual accountable loss pursuant to U.S.S.G. Guidelines § 2B1.1(b)(1)(H) when stated loss was \$308,783.67 less than \$400,000.00. The government opposes the motion (Doc. 119). Based on the following, the Court denies the motion.

Rule of Criminal Procedure 36 provides:

After giving any notice it considers appropriate, the court may at any time correct a clerical error in a judgment, order, or other part of the record, or correct an error in the record arising from oversight or omission.

Here, Rios argues that there is no evidence in the record that increases the actual loss above the \$308,783.67 restitution and that the plea agreement contains a clerical error in the Guideline Offense Level calculation of 14 levels pursuant to § 2B1.1(b)(1)(H) “loss exceeding \$400,000 but less than \$1,000,000.” The government argues that Rios entered into a binding plea agreement, that the parties agreed that 37 months was an appropriate sentence and the Court accepted the binding plea agreement. The Court agrees with the government and finds Rios’ motion without merit. The defendant entered into and signed the stipulation of facts and signed the plea agreement. The loss calculation was negotiated by the parties and reviewed by the Court at the plea and sentencing. The stipulation of facts included the loss calculation which states that between 1995 and 1999, Rios engaged in a scheme to defraud health care benefit programs of over \$400,000. Further, defendant did not object to the Presentence Report which concluded the loss calculation was over \$400,000. Thus, the Court finds that there is no clerical error in the record, judgment or otherwise in this case.

Accordingly, the Court **DENIES** Rios’ emergency motion to correct a clerical error pursuant to Rule 36 (Doc. 115).

IT IS SO ORDERED.

Signed this 29th day of January, 2014.

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David R. Herndon
Date: 2014.01.29
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**Chief Judge
United States District Court**